

**TENNESSEE
COLLECTION SERVICE BOARD
MINUTES**

DATE: May 5, 2009

PLACE: Andrew Johnson Tower – 2nd Floor Conference Room
710 James Robertson Parkway
Nashville, Tennessee

PRESENT: Board Members:
Bart Howard, Chairman
Elizabeth Trinkler
Worrick Robinson----Joined the meeting at 10:25 a.m.
James Mitchell

PRESENT: Staff Members:
Donna Hancock, Interim Director
Terrance Bond, Staff Attorney
Judy Elmore, Administrative Assistant

GUESTS:

CALL TO ORDER:

Chairman Howard called the meeting to order and the following business was transacted:

Director Donna Hancock called the roll.

ANNOUNCEMENT

Attorney Bond updated the Board on legislation.

APPEARANCE OF JASON NEAL BURNETT & EXECUTIVE SUPPORT SERVICES, INC.

Director Hancock stated the purpose of the appearance was to appeal the exam deadline date for May 15, 2009. The collection agency application was received prior to the deadline for the location manager application but the location manager application was not submitted until April 1, 2009.

The collection agency application is incomplete due to needing an explanation as to why there is no money in the trust account and the clients are not owed anything.

Mr. Burnett's application was also presented to the Collection Service Board due to his credit report.

MOTION was made by Elizabeth Trinkler to deny the application at this time with the option to review it again upon receipt of evidence that the credit issues have been paid and resolved. Seconded by James Mitchell.

MOTION CARRIED

“EXTENDED BUSINESS OFFICES” OR “EARLY OUT” SERVICES-----APPEARANCE J. W. DUKE, CHARLES MARTIN AND GEORGE BUCK ON BEHALF OF FA MANAGEMENT

Representatives of FA Management (license #122) appeared before the Collection Service Board to discuss the application of Tennessee Collection Service Act to providers of “early out collections” or “extended business office” services, where an agency makes calls/issues letters to account holders in the name of the creditor only and does not collect any monies on behalf of the creditor. The representatives suggested that this particular business model differs from that of a traditional “collection service” and might fall outside the scope of the Tennessee Collection Service Act.

Attorney Bond acknowledged that differences do exist between the “early out” business model and the traditional “collection service” model, but felt that since FA management is currently licensed as a collection service, they are subject to the Tennessee Collection Service Act as well as applicable federal law.

Attorney Bond also stated that contract between FA management and the creditor was nearly identical to a typical collection services contract—it contained language indicating that FA management had offered to its client “the service of collecting accounts that were due the creditor”, which is consistent with the definition of “collection service” (T.C.A. §62-2-102(3)) that is currently in force.

The representatives stated that they had reviewed their contracts with their “early out” clients and made some changes that they thought would be appropriate in light of the potential compliance-related issues, but that they wanted additional guidance from the Board to ensure that they needed to maintain licensure in the State of Tennessee.

Attorney Bond suggested that FA Management present a draft of its revised business model/service contracts for the Board’s review, which the representatives agreed to do. The Board indicated that it would be interested in reviewing such documents.

ADOPT AGENDA

MOTION was made by Elizabeth Trinkler, seconded by Worrick Robinson, to adopt the meeting agenda as presented.

MOTION CARRIED

MINUTES

MOTION was made by Elizabeth Trinkler and seconded by James Mitchell to *approve the minutes of March 3, 2009 meeting as written.*

MOTION CARRIED.

ADMINISTRATIVE ISSUES---DIRECTOR, DONNA HANCOCK

Ms. Hancock presented the Board with a report of open complaints. She stated that there are 103 open complaints with 53 being older than 180 days.

MICHAEL RAINWATER

Ms. Hancock presented the Board with a request from Michael Rainwater to be scheduled for the May 15, 2009 exam. As of this date the office had not received Mr. Rainwater's application.

MOTION this request failed for lack of a motion.

BUDGET REPORT

Ms. Hancock presented the Collection Service Board with the budget report for fiscal year 2007-2008.

LEGAL REPORT---TERRANCE BOND, STAFF ATTORNEY

DISCLAIMER

This Board is not responsible for the contents of the legal report. The report is compiled and presented to the Board by Assistant General Counsel, Terrance Bond.

1. 200900290-1 (licensed since 1991)

Complainant alleges that the Respondent was in possession of an expired collection service license at the time it was pursuing collection against the Respondent. During the relevant time period, Respondent was in the process of renewing its license and was working directly with the administrative section to resolve all issues that were delaying the renewal of the license.

Recommendation: Close.

BOARD: Approved.

2. 200802407-1 (licensed since 1995)

Complainant alleges that Respondent contacted her concerning an account that does not belong to her. Respondent failed to respond to the complaint. Postal service records indicate that the complaint was delivered to the Respondent.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and payment of a \$1,000.00 civil penalty.

BOARD: Approved.

3. 200802754-1 (licensed since 2003)

Complainant alleges that the Respondent has contacted her at her place of employment after being told that such calls were improper. Complainant also states that the Respondent demanded that her immediate supervisor pass on a message to her and then asked to speak to the supervisor's supervisor when the supervisor informed the Respondent that such calls were inappropriate. Respondent admits in its response that two calls were made to the Respondent, but fails to specify if the calls were directed to the Complainant's home or the Complainant's place of employment.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and payment of a \$1,000.00 civil penalty.

BOARD: Raised the civil penalty to \$2,000.00.

4. 200900497-1 (not required to be licensed)

Complainant alleges that Respondent, a law firm which engages in debt collection, is acting in violation of Tennessee law by failing to have a collection service license and that it is improperly receiving assignments of debt.

Recommendation: Close with no action.

BOARD: Approved.

5. 200802483-1 (licensed since 2005)

Complainant alleges that Respondent made repeated calls to them concerning the past due account of her deceased father-in-law, despite the Complainant's explanation to the Respondent that she was neither the executor nor the administrator of the estate of the deceased, that the deceased had no assets, and that the Respondent's continued calls concerning the matter were improper and should cease. Complainant provided detailed accounts of four calls from the Respondent to her concerning the account of the deceased after she made a request to "cease communication". Respondent states that the account in question was placed in its office on September 25, and that collection activity ceased relative to the account on September 29, 2008 after it was informed that the deceased had no estate and asked to cease communication. The Respondent further apologized to the Complainant "for any inconvenience that [she] may have experienced."

Recommendation: Authorize formal hearing with authority to settle by Consent Order and payment of a \$3,000.00 civil penalty.

BOARD: Lowered the civil penalty to \$1,500.00.

6. 200802753-1 (licensed since 2008)

Complainant alleges that she received a series of calls from the Respondent concerning a person whom she does not know. Complainant states that she informed the Respondent after receiving the first call that she is not the responsible party and that the Respondent should cease contacting her concerning the matter. Complainant states that despite her request, she continued to receive calls from the Respondent for three to four months following her verbal request. Respondent states that the Complainant's telephone number "has been removed" from the account in question and that it is their "intent not to have any further communication with [the Complainant]."

Recommendation: Authorize formal hearing with authority to settle by Consent Order and payment of a \$1,000.00 civil penalty.

BOARD: Approved.

7. 200802757-1 (licensed since 2006)

Complainant alleges that the Respondent has contacted her several times concerning a past due account or accounts belonging to her ex-husband. Complainant alleges that she requested that the Respondent remove her number from its database and cease all calls to her concerning the account. Respondent states that the Complainant's number was provided as good contact information on the accounts in questions and that, upon receiving verbal notice from the Complainant to cease and desist communication, the Respondent asked the Complainant to send her request in writing. Respondent states that after the verbal request, it notated the accounts with temporary instructions to cease and desist contact in order to allow the Complainant time to mail her request. Respondent states that it did not initially receive a written request and waited nearly four months before placing another call to the Complainant, which was unanswered. Respondent states that it placed another call to the Complainant one month following the previous call, and that on the same day it received both a call and a letter from the Complainant demanding no further communication concerning the accounts. Respondent states that no calls have been placed to the Complainant since its receipt of the written request and that all accounts listing the Complainant's telephone number have been marked with permanent cease and desist instructions.

Prior History: Three (3) previous complaints: 1) Unlicensed activity (2006), paid \$1,000.00 civil penalty, became licensed in December 2006. 2) Failure to provide required validation documents/information. Respondent provided documentation indicating that the Complainant's request came far outside the validation window and that validation had been provided within the initial communication notice, which was not returned. (2007) The complaint was dismissed. 3) Collection efforts in error (debt was aged in excess of the statute of limitation (2008). The complaint was dismissed.

Recommendation: Close with no action.

BOARD: Approved.

8. 200802758-1 (licensed since 2006)

Complainant alleges that Respondent called him twice at his place of employment after being advised by the Complainant that he could not receive such calls while at work and would contact the Respondent as soon as he received their initial notice. Respondent states that upon the Complainant's initial request to cease contact at his place of employment, the Complainant's place of employment number was removed from the Respondent's records, but that the employment number was "accidentally" re-entered into its records at a later time.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and payment of a \$2,000.00 civil penalty.

BOARD: Approved.

9. 200900090-1 (licensed since 1975)

Complainant, a debt adjustment entity with "power of attorney" for its clients, who appear to be residents of the State of Indiana, alleges that the Respondent refused to negotiate with it concerning the alleged debt of its clients, and that the Respondent acted in violation of a cease communication request made by the clients through the Complainant by contacting the clients directly concerning the alleged debt. Complainant alleges further that the Respondents threatened the clients with legal action during the allegedly improper calls. Respondent states that it does not negotiate with debt adjustment entities and that any reference to legal action against the client was pursuant to its client's orders. Respondent provided a copy of a memorandum from its client directing the Respondent to initiate suit against the Complainant's clients "immediately".

Recommendation: Close with no action.

BOARD: Approved.

10. 200900284-1 (licensed since 2001)

Complainant provided two letters stating that she disputed an alleged past due account that was placed with the Respondent. Respondent states that it timely responded to both of the Complainant's validation requests and has now returned the account to its client for further investigation.

Recommendation: Close.

BOARD: Approved.

11. 200802411-1 (licensed since 2001)

Board originally approved an offer of settlement by payment of a \$500.00 civil penalty and Consent Order admitting to allegations that the Respondent contacted the Complainant after the

Complainant informed the Respondent that he was not the responsible party they were attempting to contact and demanded that the Respondent cease contacting him. In response to the offer of settlement, the Respondent provided account notes which were not properly completed by the representative working the account on the day the Complainant alleges he made a cease and desist demand to the Respondent. Respondent's notes do show, however, that the Complainant's number was removed after receipt of the inadequately notated call from the Complainant.

Recommendation: Discuss.

BOARD: Maintain the original offer of settlement, Consent Order with payment of a \$500.00 civil penalty.

12. 200900549-1 (licensed since 1975)

Complainant alleges that he is receiving harassing automated calls from Respondent concerning a debt that the Complainant does not believe he is responsible for. Complainant also states that the Respondent fails to identify itself during such calls. Complainant demands that the Respondent cease all communications concerning the debt and provide evidence that the debt is owed. Complainant also states its number is on the "do not call" list. Respondent states that it sent proper notification to the Complainant concerning the debt at the same address that Complainant provided on the complaint, so Complainant should be aware of the nature of the Respondent's calls. Respondent also states that it has elected to cease collection activity relative to the account and return the account to its client in light of the Complainant's demand.

Recommendation: Close with no action.

BOARD: Approved.

13. 200802190-1 (license expired in 2004)

Board originally offered settlement by payment of a \$2,000.00 civil penalty on allegations that the Respondent engaged in unlicensed activity in Tennessee. Counsel for the Respondent submitted account notes in response to the offer of settlement, which indicated that the Respondent initiated a brief collection campaign in the State of Arkansas, where the Complainant lived before moving to Tennessee. After the Complainant relocated, interaction between the Respondent and the Complainant consisted of two attempts to verify the exact amount of the claim against the Respondent, and the Complainant's accord and satisfaction payment to the creditor, which was accepted by the creditor.

Recommendation: Close with a letter of warning.

BOARD: Approved.

MOTION was made by Worrick Robinson and seconded by Elizabeth Trinkler to approve the final complaint report as written in the minutes.

MOTION CARRIED

RULES DISCUSSION

Attorney Bond introduced the Administrative Rules for discussion. He stated that he had made the changes the Board had requested at a previous meeting. Chairman Howard asked if it would be appropriate for the Tennessee Collectors Association to review the rule changes and offer their comments. Attorney Bond stated he would welcome their feed back.

QUEST REPORT VERUS CREDIT REPORT

Attorney Bond discussed the Board's tradition of accepting a Quest Report in lieu of a Credit Report for out-of-country applicants. Mr. Bond stated that the quest report failed to meet the qualifications of a credit report and therefore he did not think the Board should accept the Quest Reports any longer.

The Board agreed and determined that Quest Reports in lieu of Credit Reports will no longer be acceptable.

APPLICATION REVIEW—DETERMINE ELIGIBILITY FOR TESTING/LICENSING**JAMES P. DEPALMA**

Mr. DePalma's application was presented to the Board for review of his credit report to determine his eligibility to take the Tennessee Location Manager examination. Information was received stating that all the adverse summary items on the credit report had been addressed and all liens have been released. The Board failed to approve his application because of derogatory information contained in his credit report indicating a lack of financial responsibility.

DANELE MARIE EMERY

Ms. Emery's application was presented to the Board for review of her credit report to determine her eligibility to take the Tennessee Location Manager examination. The Board failed to approve her application because of derogatory information contained in her credit report indicating a lack of financial responsibility.

BRETT ANDREW EVANS

Mr. Evans' application was presented to the Board for review of his credit report to determine his eligibility to take the Tennessee Location Manager examination. The Board failed to approve his application because of derogatory information contained in his credit report indicating a lack of financial responsibility.

MICHAEL G. MCGREW

Mr. McGrew's application was presented to the Board for review of his credit report to determine his eligibility to take the Tennessee Location Manager examination. The Board failed to approve his application because of derogatory information contained in his credit report indicating a lack of financial responsibility.

GLEN SCOTT ODOM

Mr. Odom's application was presented to the Board for review of his credit report to determine his eligibility to take the Tennessee Location Manager examination. The Board failed to approve his application because of derogatory information contained in his credit report indicating a lack of financial responsibility.

DAVID BOHLING, JR.

Mr. Bohling's application was presented to the Board for review of his credit report to determine his eligibility to take the Tennessee Location Manager examination. The Board failed to approve his application because of derogatory information contained in his credit report indicating a lack of financial responsibility.

DEANNA E. JOPLIN

Ms. Joplin's application was presented to the Board for review of her credit report to determine her eligibility to take the Tennessee Location Manager examination. The Board failed to approve her application because of derogatory information contained in her credit report indicating a lack of financial responsibility.

RYAN NICHOLS MULLEN

Mr. Mullen's application was presented to the Board for review of his credit report to determine his eligibility to take the Tennessee Location Manager examination. The Board failed to approve his application because of derogatory information contained in his credit report indicating a lack of financial responsibility.

DENNIS DAMIAN KONSTANTY

Mr. Konstanty's application was presented to the Board for review of his credit report to determine his eligibility to take the Tennessee Location Manager examination. The Board failed to approve his application because of derogatory information contained in his credit report indicating a lack of financial responsibility.

AGENCY RENEWAL APPLICATION REVIEW

The renewal application for AAA Collection & Counseling Services, Inc. is being presented due to the financial statement. The financial statement reflects that the "Total Assets" do not exceed the "Total Liabilities". A certified letter was mailed on March 23, 2009 requesting an explanation as to why the "Total Assets do not exceed the "Total Liabilities". Chairman Howard rescued himself and Chairman Howard turned the meeting over to Vice Chairman Elizabeth Trinkler.

MOTION was made by Worrick Robinson and seconded by Bart Howard to defer approval of the renewal application until June 30, 2009 and instructed staff to request an updated financial statement.

MOTION CARRIED.

OLD BUSINESS

There was no Old Business.

NEW BUSINESS

There was no New Business.

Bart Howard, Chairman

Shannon Polen

Elizabeth Trinkler, Vice Chairman

Worrick Robinson

James Mitchell